

Case Conclusion Data Sheet

Please click here for instructions for completing the form

Program Contact: Carol Ropski
Phone: 3-7647

ORC Attorney: Tom Turner
Phone: 6-6613

EPA Region 5 Records Ctr.



370474

Status:

CASE BACKGROUND

1. ICIS Enforcement Activity Number:
2. Regional Hearing Clerk Docket Number:
3. Program Docket Number:
4. Judicial Court Docket Number:
- * 5. Case Name (Add Defendants if other than case name) **Bautsch-Gray Mine
Superfund Site - PRPs: West Galena Development, Inc., Chains and Links, Inc., Vincent A.
Varsek Trust**
Additional Defendants:

FACILITY INFORMATION

6. EPA Program Facility ID:
- * 7. Facility Name: Bautsch-Gray Mine
- * 8. Facility Street Address: Sout Blackjack Road
City, State, Zipcode: Galena, IL 60136
County: Jo Daviess
- * 9. Primary 4-digit NAICS/SICCode: <http://www.census.gov/epcd/www/naics.html>
10. Other 4-digit NAICS/SIC codes: <http://www.census.gov/epcd/www/naics.html>

STATUTES AND AUTHORIZING SECTION INFORMATION

- * **Media Program** **CERCLA**
- * 11. Statute(s) and Section(s) Violated : CERCLA 107
 - * 12. Authorizing Section for Administrative Actions: CERCLA 106
* **Violation Type:** **Disposal**

ACTION TYPE

- * 13. Action Type: **Administrative compliance order (AOC/UAO/PPA)**
- 14a. **ALJ Decision:**
- 14b. **EAB Appeal Date:**
- 14c. **EAB Decision Date:**
- * 16. Administrative Compliance Order Date:
- * 16a. Notice of Determination Date:
- * 16b. Field Citation Date:
- 16c. Notice of Violation Date:
17. Civil Judicial Referral Date:
18. Civil Judicial Complaint Filed:
19. Consent Decree Lodge Date:
- * 20. Consent Decree Entry Date:

21. Was this a multi-media action?
23. Was this action part of a geographic initiative:
24. Which (Check all that apply)?
- 24a. Priority/Sector
25. Was this Agency activity taken in response to Environmental Justice Concerns?
26. Is this a Small Business?
- 26a. Was this a self-disclosure?
27. Was Alternative Dispute Resolution used in this action?

QUALITATIVE AND QUANTITATIVE INFORMATION

* 28. Injunctive Relief/Compliance Activity: Include both actions completed prior to final settlement/order and actions to be taken by violator to return to compliance or meet additional requirements. Select responses from the following list. At least one action must be chosen:
Removal

* 29. Provide Description of Injunctive Relief/Compliance Activity:

Remove mine tailings containing hazardous levels of lead and arsenic from affected areas adjacent to the Site source areas; return waste to Site; establish effective berm at Site boundary and water retention control points on-Site.

* 30. Cost of actions described in previous question (Actual cost data supplied by violator is preferred figure)

Physical actions: Non-Physical Actions:

31. Acres in Violation:

32. Quantitative environmental impact of injunctive relief/compliance actions described in previous questions:

REDUCTIONS/ELIMINATIONS:

* Pollutant/Land Use	* Amount	* Units/Acres (Express in annual amounts)	* Percent% (of pollutant reduced-removed)	* Media

SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs)

33. Categories of SEP (check all the appropriate categories)

Does SEP address any of the Region 5 Environmental Priorities

34. SEP Description:

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35. Cost of SEP (Cost Calculated by the PROJECT Model is preferred):

36. Quantitative environmental impact of SEP; pollutants and/or chemicals and/or waste streams and amount of reductions/eliminations (e.g., emission/discharges):

Pollutant	Amount	Units	Percent% (of pollutant reduced/removed)	Media

PENALTY

37. Proposed Penalty:

38. Assessed Penalty:

39. If Shared Federal Share:

40. If Shared State or Local Share:

41. For multi-media actions: Federal amounts by Statute

Statute	Amount
CAA	
CERCLA	
CWA 402	
CWA 311	
CWA 404	
EPCRA 304/312/325	
EPCRA 313	
FIFRA	
RCRA	
RCRA/UST	
SDWA/UIC	
TSCA	

COST RECOVERY (SUPERFUND ONLY)

42. Amount of cost recovery award: State and/or Local government:
Other:

* PLEASE ADD ADDITIONAL INFORMATION, INCLUDING SHORT CASE SUMMARY:

This is CERCLA 106 UAO to be issued to 3 owner-PRPs of portions of a closed lead and zinc mine, where unsolidified, piled mine tailings containing hazardous levels of lead and arsenic are located. The tailings piles have repeatedly been washed on to adjacent properties and into nearby residential water systems, due to extreme rain storms.

DOCUMENT HISTORY

Document Author: Thomas Turner 07/28/2010 09:26:10 AM

Edit History: Last 5 Editors Edit Date & Time

AUG 10 2010

SE-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Bautsch-Gray Mine Site
Jo Daviess County, Illinois

Dear Sir or Madam:

Enclosed please find a unilateral Administrative Order issued by the U.S. Environmental Protection Agency (EPA) under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. § 9601, et seq.

Please note that the Order allows an opportunity for a conference if requested within 3 business days after issuance of the Order, or if no conference is requested, an opportunity to submit comments within 7 business days of issuance of the Order.

If you have any questions regarding the Order, feel free to contact Tom Turner, Associate Regional Counsel, at (312) 886-6613 or Len Zintak, On-Scene Coordinator, at (312) 886-4246.

Sincerely yours,

Richard C. Karl, Director
Superfund Division

Enclosure

cc: Mr. Gary King
Illinois Environmental Protection Agency
Division of Land Pollution Control

8/11/10

CUS
8/14/10

bcc: Docket Analyst, ORC (C-14J)
Tom Turner, ORC (C-14J)
Len Zintak, (SE-5J)
John Maritote, EESS (SE-5J)
Carol Ropski, ESS#1 (SE-5J)
Fushi Cai, ESS#1 (SE-5J)
Richard Hackley, PAAS (MF-10J)
Joseph Poetter, U.S. EPA, MS-002, 26 W. Martin Luther King Drive, Cincinnati, OH 45268

Michael T. Chezik
Regional Environmental Officer
Office of Environmental Policy and Compliance
Philadelphia Region
Custom House, Room 244
200 Chestnut Street
Philadelphia, PA 19106

Records Center (SMR-7J)

**REMOVAL PROGRAM
UNILATERAL ADMINISTRATIVE ORDER
ROUTING SLIP
(Revised July 2010)**

_____**BAUTSCH-GRAY MINE SITE**_____

(SITE NAME)

Route corrected 8/2/2010 - D. Keating

(Final version, already signed by the PRPs, being processed for U.S.EPA signature.
Use if Order has already gone through complete sign-off up through ERB Branch Chief and has been signed by
PRPs with no substantive changes.)

Please sign and check your name off this page.
Then pass the document on to the next name.

	<u>NAME</u>	<u>MAIL CODE</u>
1. ESS #1 ENFORCEMENT SPECIALIST	<u>Carol Ropski</u>	<u>SE-5J</u>
2. ERB ON-SCENE COORDINATOR	<u>Len Zintak</u>	<u>SE-5J</u>
3. ERB SECTION CHIEF I/II/III	<u>Tom Crosetto</u>	<u>SE-5J</u>
4. ESS #1 SECRETARY	<u>Akimi Cheng</u>	<u>SE-5J</u>
5. ORC STAFF ATTORNEY	<u>Tom Turner</u>	<u>SE-5J</u>
6. ESS #1 SECRETARY	<u>Akimi Cheng</u>	<u>SE-5J</u>
7. ECAB SECRETARY	<u>Hilda Mateer</u>	<u>SE-5J</u>
8. ERB (#1 or #2) CHIEF	<u>Linda Nachowicz</u>	<u>SE-5J</u>
9. ECAB SECRETARY	<u>Hilda Mateer</u>	<u>SE-5J</u>
10. ENFORCEMENT COORDINATOR	<u>Larry Schmitt</u>	<u>S- 6J</u>
11. DOCKET CLERK	<u>Katrina D. Jones</u>	<u>S- 6J</u>
12. SF DIVISION DIRECTOR FOR SIGNATURE	<u>Rick Karl</u>	<u>S- 6J</u>
13. ECAB BRANCH SECRETARY FOR LOGGING	<u>Hilda Mateer</u>	<u>SE-5J</u>
14. ECAB BRANCH CHIEF (For Review Only)	<u>Mike Harris</u>	<u>SE-5J</u>
15. ESS #1 SECRETARY FOR MAILING	<u>Akimi Cheng</u>	<u>SE-5J</u>

TO PRPS AND DISTRIBUTION OF BCC LIST

DATE MAILED TO PRPs: _____

REMOVAL PROGRAM
106 UNILATERAL ORDER ROUTING SLIP
(Revised August 2010)

BAUTSCH-GRAY MINE SITE
(SITE NAME)

Please sign and check your name off this page.
Then pass the document on to the next name.

	<u>NAME</u>	<u>MAIL CODE</u>
1. ESS #1 ENFORCEMENT SPECIALIST	<u>Carol Ropski</u>	<u>SE-5J</u> ✓ <i>attached</i>
2. ERB ON-SCENE COORDINATOR	<u>Len Zintak</u>	<u>SE-5J</u> ✓ <i>attached</i>
3. ERB RESPONSE SECTION CHIEF I/II/III	<u>Tom Crosetto</u>	<u>SE-5J</u> ✓ <i>attached</i>
4. ESS #1 SECRETARY	<u>Akimi Cheng</u>	<u>SE-5J</u> ✓
5. ORC STAFF ATTORNEY	<u>Tom Turner</u>	<u>C-14J</u> ✓
6. ORC SECTION CHIEF	<u>Connie Puchalski</u>	<u>C-14J</u> ✓
7. ESS #1 SECRETARY	<u>Akimi Cheng</u>	<u>SE-5J</u> ✓
8. ESS #1 SECTION CHIEF	<u>Bill Messenger</u>	<u>SE-5J</u> ✓ <i>h/3/2/1/17+18+19+20</i>
9. ECAB BRANCH SECRETARY	<u>Hilda Mateer</u>	<u>SE-5J</u> ✓
10. ERB-2 BRANCH CHIEF	<u>Linda Nachowicz</u>	<u>SE-5J</u> ✓ <i>attached</i>
11. ECAB BRANCH SECRETARY	<u>Hilda Mateer</u>	<u>SE-5J</u> ✓
12. ENFORCEMENT COORDINATOR	<u>Larry Schmitt</u>	<u>S -6J</u> ✓
13. DOCKET CLERK	<u>Katrina D. Jones</u>	<u>S -6J</u>
14. SFD DIRECTOR	<u>Rick Karl</u>	<u>S -6J</u> <i>RM 8-10-10</i>
15. ECAB BRANCH CHIEF	<u>Michael Harris</u>	<u>SE-5J</u> ✓
16. RETURN TO SE-5J/ESS #1 SECRETARY FOR MAILING TO PRPs AND DISTRIBUTION OF BCC LIST. DATE MAILED TO PRPs: _____		

Implementation of UAO Reform Questionnaire

(form revised 2/10/04)

- § This form should be filled out for each UAO issued pursuant to CERCLA 106 (except those issued for site access only).
§ Please fill out this form **no later than two weeks** after issuance.
§ **Once completed, the form should be returned to Mike Northridge, USEPA, mail code 2272A, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460**, or through LAN mail.
§ If you have any questions regarding the questionnaire, please call Mike at (202)564-4263.

Site Name: **Bautsch-Gray Mine** Site Region: **5** Date Prepared: **8/10/10**

Preparer Name: **Carol Ropski** Position: **Enforcement Specialist**
Phone Number: **312/353-7647**

1)a) Date UAO issued: 8/10/10 b) UAO Number: V-W-10-C-954
(if available) (e.g., UA002)

2) Purpose of UAO (please Y appropriate box):
(Note: Do not include UAOs that are for **access** only)

Removal	RI/FS	RD/RA
x		

3) Number of parties receiving the UAO: 4

4) Number of parties receiving the UAO that were governmental (local, state or federal) entities: 0
(Note: Please provide names of any governmental parties that received the UAO)

5) Number of parties that did **NOT** receive the UAO: 2

Note: Parties are considered excluded when:

- § There is sufficient evidence to make a preliminary determination of potential liability under ' 107 of CERCLA;
and
§ They have not previously reached full settlement with the government; and
§ They were not issued the UAO.

STOP here if the answer to question 5 is zero.

6) If parties were excluded from the UAO, please provide the reason(s) for excluding them in the chart on the next page:

Note: Agency policy provides for only several acceptable reasons for excluding PRPs from a UAO.

These include:

- 1) lack of evidence of the party=s liability;
- 2) the party is financially non-viable;
- 3) the party made only a relatively minor contribution towards the site conditions (e.g., sent only a de minimis amount of waste to the site);
- 4) consideration of work that a PRP has already conducted at the site (or has agreed to conduct), especially where such work is equivalent to that PRP's fair share; and

5)the UAO was already being issued to a large number of PRPs and the inclusion of additional parties would have raised manageability concerns.

7)Did the package presented to the Regional decision-maker identify the PRPs not receiving the UAO, and the reason(s) for their exclusion? Yes

A) If the information was not in the UAO package but instead was presented to the Regional decision-maker via a different context, then please prepare a memo to the file now and submit a copy to HQ. The memo should document the different means that were used to present this information to the decision-maker (e.g., via written briefing materials separate from the UAO package itself).

B) If there is no paperwork documenting that the decision-maker was presented with information regarding both the existence of excluded PRP(s) and the reason(s) for exclusion, please now prepare an appropriate memo to the decision-maker and submit a copy to HQ.

8)If the reason (or one of the reasons) for excluding a party(ies) was lack of financial viability, did the UAO package contain (or cross-reference) documentation for each PRP that allegedly did not have an ability to pay cleanup costs? Yes *Note: For each PRP excluded due to financial viability, the 8/2/96 procedures call for PRP-specific documentation of financial condition. See #7 for explanation*

	Reason for Exclusion	Number of Parties Excluded due to Reason	Identify any Government entities excluded
1	Lack of evidence; litigative risks	1	
2	Financially non-viable	1	
3	Minor contribution of waste to the site		
4	Contributed "fair share"		
5	Manageability concerns		
	Other reason (please explain)	2	

.....Please don't hesitate to contact Mike Northridge at (202) 564-4263 with any questions regarding this questionnaire or suggestions for him

BAUTSCH-GRAY MINE SITE UAO
JUSTIFICATION MEMO

The rationale for not naming prior Site owner and operator Eagle-Pitcher Industries, Inc. (EP) is that EP has gone through two historical bankruptcies, in 1995-1996 (EP1) and in 2005-2006 (EP2). A 1995 Settlement Agreement with the United States provided a covenant not to sue for 23 then identified sites. It also provided that sites not owned by EP would be discharged under bankruptcy law but liquidated as general unsecured claims if EPA were to undertake enforcement action, and that EP would not be subject to CERCLA 106 or RCRA 7003 Orders for unilateral Action at these sites. The (Bautsch-Gray Mine) Site in question here was not owned by EP at the time of its bankruptcy petition. Therefore, EPA does not believe that any settlement money obtained for response costs in prior settlements with EP (that would be dedicated to specific sites) would be available for this Site, and EPA's recourse against EP for this Site would be limited, at best, to an unsecured claim on its response costs at a later date. See, *In re Eagle-Picher Industries, Inc.*, U.S. Bankruptcy Ct., S.D. OH-Western Div., Consolidated Case No. 1-19-00100, *et al.* Settlement Agreement (March 23, 1995), approved by the court (June 6, 1996).

The rationale for not naming Louie's Trenching, a potential operator, is that the Site Enforcement Team is currently developing further information, based on the July 22, 2010 combined CERCLA General Notice Letter and 104e Information Request. If it is established that Louie's Trenching is a viable and liable PRP under CERCLA, then it will be added to the UAO by amendment.

ENFORCEMENT INSTRUMENT DETAILS SIGN OFF SHEET (Completed form to Deb Potter)

SITE NAME: Bautsch-Gray Mine Site

EPA ID: B5TS

CERCLA STATUTE (Circle all that apply):

104	<u>106</u>	107	122
	Bankruptcy		

SETTLEMENT/ORDER TYPE (Circle appropriate): Referral AOC ~~CD~~
UAO Other

SETTLEMENT/ORDER DETAILS:

Is the settlement/order for response work? YES ~~NO~~

IF YES: Type of response work PRP will perform: Removal

Estimated value of the response work PRP will perform \$2,035,500

Is the settlement/order for recovery of past costs? YES NO

IF YES: Value of the past costs being recovered in the settlement/order \$

Action being reimbursed by the pasts costs in the settlement/order

Date of original referral if CD is part of a case for cost recovery that

was referred to the Department of Justice in the past

Is the settlement/order for payment of future costs (cashout)? YES — NO

IF YES: Value of the future costs being paid in the settlement/order \$

Action being funded by future costs in the settlement/order

Does the settlement/order include a provision for all or a portion of the past or future costs to be deposited into a Special Account? YES NO _____

IF YES: Value that will be deposited into a Special Account \$

Does the settlement/order include a provision for a Disbursement Account? YES NO

Does the settlement/order include disbursements from a Special Account? YES NO

IF YES: Value that will be disbursed from a Special Account \$

Does the settlement/order include compensation for an orphan share offer? YES NO

IF YES: Value of the compensation due to orphan share \$

Date original orphan share offer made to the PRP

Does the settlement/order include a provision for Ability to Pay? YES NO

Attach list of PRPs who signed or were issued the settlement/order.

Include addresses when available

Identify each as (T) Transporter, (G) Generator, (O) Owner, (P) Operator

Is the settlement/order a De Minimis settlement? YES NO

Distinguish De Minimis parties from non-De Minimis parties

Completed By (*Please print*): Carol Ropski Date Completed:
7/27/10
